IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 318 of 1995

in

SPECIAL CIVIL APPLICATIONNo 4825 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHABHAI JETHABHAI DAMANI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Appellants

MR RC KODEKAR, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/03/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated March 27, 1995 rendered by the learned Single Judge in Special Civil Application No. 4825/90, by which challenge made by the appellants to order dated December 31, 1987 passed by the Competent Authority, Urban Land Ceiling, Rajkot refusing to review his earlier order, is negatived.

2. Land admeasuring 514 sq.mts. of Plot No.6 bearing Survey No.26, Sanad No.166 situated in the outskirts of village Mavdi, Taluka : Rajkot was purchased by Narendrakumar Jethabhai Damani, who is real brother of the appellants, from its owner Odhavji Ambarambhai by a registered sale deed dated November 15, 1965. It may be stated that the appellants at the relevant time were residing at Sudan and the above-referred to land was purchased by Narendrakumar Jethabhai Damani for and on behalf of the appellants from the consideration which was remitted by the appellants from Sudan. When the appellants returned to India in the year 1966, benamidar i.e. Narendrakumar Jethabhai Damani executed a registered deed of transfer dated December 14, 1966 in respect of the aforesaid property in favour of the appellants which is produced at Annexure-A to the petition. In the deed, it was recited that Narendrakumar Jethabhai Damani was the benamidar of the appellants and the property in question was purchased by him with the funds which were supplied by the appellants. The Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short) came into force with effect from February 17, 1976. Therefore, Narendrakumar Jethabhai Damani submitted statement before the Competent Authority under section 6(1) of the Act, as he was owning parcels of land within the Urban Agglomeration of Rajkot. By mistake, in the said statement he also mentioned the above-referred to property, though he himself had transferred the said property to the appellants by registered deed dated December 14, 1966. The statement submitted by Narendrakumar Damani was processed and the Competent Authority and Additional Collector, Urban Land Ceiling, Rajkot by an order dated December 31, 1987 passed under section 8(4) of the Act held that Narendrakumar Damani was in possession of land in question as excess vacant land and ordered the land to be surrendered. The amount of compensation payable was determined under section 11

of the Act, against which Narendrakumar Damani had filed an appeal under section 12 of the Act before the Urban Land Tribunal at Ahmedabad, which was registered as Appeal No. Rajkot-4/88. The appeal was dismissed by the Tribunal vide order dated August 18, 1988. The appellants came to know that excess holding surrendered by Narendrakumar Damani included the land which was purchased by Narendrakumar for and on their behalf and which was subsequently retransferred to them by a registered deed. Therefore, they made an application to the State Government for revising the order passed by the Competent Authority under section 8(4) of the Act. A copy of the said application is produced at Annexure-D to the petition. The respondent no.1 rejected the application submitted by the appellants vide order dated May 4, 1989, which is produced at Annexure-E to the petition. That order was challenged by the appellants in Special Civil Application No. 4825/90.

3. The learned Single Judge held that as Narendrakumar, who was benamidar,had filed an appeal against the order passed by the Competent Authority under section 11 of the Act, the State Government was justified in refusing to exercise powers under section 34 of the Act and, therefore, the order passed by the State Government was not liable to be set aside. It was deduced that possession of the excess vacant land was taken over by the Competent Authority as well as the compensation was also paid to the benamidar and therefore, the challenge to order of the Competent Authority nearly after two decades from declaration dated December 14, 1966 in favour of the appellants was not wellfounded. After considering the decision of the Supreme Court in Mithilesh Kumari and another vs. Prem Behari Khare, AIR 1989 SC 1247. The learned Single Judge concluded that the appellants were not entitled to get any relief against the benamidar in any proceedings. In view of the above-referred to conclusions, the learned Single Judge dismissed the petition by judgment dated March 27, 1995, which has given rise to the present appeal.

4. Mr. Y.N.Oza, learned Senior Advocate submitted that the appeal filed under section 12 of the Act by Narendrakumar, who was benamidar of the appellants, related to determination of compensation only, but the decision that the disputed property was liable to be declared as excess vacant land, was never challenged in any appeal and, therefore, the learned Single Judge was not justified in holding that in view of the appeal which was filed by the benamidar under section 12 of the Act,

the appellants were not entitled to invoke jurisdiction of the State Government under section 34 of the Act. According to the learned Counsel for the appellants, by an order dated December 31, 1987 the property which was retransferred to the appellants, was declared by the Competent Authority to be excess vacant land under the Act and immediately in January, 1989 the appellants had filed application before the State Government to revise the said order and in these circumstances the learned Single Judge was not right in holding that the hands of the clock cannot be put back in favour of the appellants more particularly for their slumber of nearly two decades after the benamidar executed the declaration in their favour on December 14, 1966. What was emphasised on behalf of the appellants was that the decision in Mithilesh Kumari and another (supra) is reversed by the Supreme Court in R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs, (1995) 2 SCC 630 and, therefore, the learned Single Judge is not correct in holding that the appellants cannot get any relief against benamidar in any proceedings. The stress of the learned Counsel for the appellants is that by mistake, brother of the appellants had included the property in question in the statement which was submitted by him under section 6(1) of the Act, but as the appellants are real owners of the same, the impugned judgment should be set aside and the appeal should be allowed.

5. Mr. R.C.Kodekar, learned A.G.P. contended that as the brother of the appellants had exhausted the remedy of appeal under section 12 of the Act against order passed under section 11 of the Act, the State Government was justified in not exercising powers under section 34 of the Act. It was claimed on behalf of the respondents that there was unreasonable delay on the part of the appellants in invoking the jurisdiction of the State Government under section 34 of the Act and, therefore, the judgment of the learned Single Judge should be upheld.

6. We have heard the learned Counsel for the parties and taken into consideration the documents forming part of the petition. The registered document dated November 15, 1965 which is at Annexure-B to the petition, makes it more than clear that Narendrakumar Jethalal Damani had purchased the property in question from Odhavji Ambarambhai.However, another registered deed of transfer executed by Narendrakumar Jethalal Damani on December 14, 1966 in favour of the appellants makes it manifest that Narendrakumar Damani had purchased the property from the

funds which were remitted by the appellants and the appellants were the real owners of the property. It would be necessary to reproduce hereinbelow the relevant recital made in the said registered deed of transfer, which indicates that the appellants are the real owners of the property.

> "Thus, 613.80 sq.yds. (514 sq.mts.) of land of plot No.6(six) of Survey No.26 within the aforesaid four boundaries was purchased for you only and with your money only. Therefore, you alone are the real and true owner of the said land and possession and enjoyment of the said land is yours only and the same is in your possession. Accordingly, you are also the legal, real and true owner of the said land and I or my heirs and legal representatives or any other person have no right, share or interest whatsoever in that land. However, if anybody comes forward raising any objection,obstruction or dispute in regard to this lands, then the same is null and void under this document and you are the only real and true owner of this land. Therefore, you are fully entitled and authorised to dispose of this land as the absolute owner by way of sale, mortgage, gift or will."

The perusal of the above-referred to recital leaves no doubt that the appellants were the real owners of the property in question and Narendrakumar who was their real brother, was merely benamidar for them. However, while submitting the statement under section 6(1) of the Act with reference to parcels of land owned by him, Narendrakumar had also included this property, which ultimately came to be declared as excess vacant land by an order dated December 31, 1987. It is true that Narendrakumar, who is benamidar of the appellants, had filed an appeal under section 12 of the Act, but the said appeal was directed against inadequacy of compensation determined by the Competent Authority under section 11 of the Act and the question whether benamidar was the real owner of the property or not, was never raised nor decided in the said appeal. Therefore, in our view, the learned Single Judge was not justified in concluding that the appellants were not entitled to invoke the jurisdiction of the State Government under section 34 of the Act because the appeal filed by the benamidar under section 12 of the Act was dismissed by the Urban Land Tribunal. In view of the provisions of section 34 of the Act, the appellants would not have been justified in invoking revisional jurisdiction of State

Government against order determining the compensation payable either to the appellants or their benamidar, but question of title having not been adjudicated in an appeal under section 33 of the Act, they were justified in invoking revisional jurisdiction of the State Government under section 34 of the Act. It is relevant to note that the State Government had not refused to exercise powers under section 34 of the Act on the ground that there was unreasonable delay on the part of the appellants in invoking the jurisdiction of the State Government under section 34 of the Act. The order of the State Government which is produced at Annexure-E to the petition establishes that the State Government had refused to exercise powers under section 34 of the Act because the appeal preferred by Narendrakumar Damani against an order passed under section 11 of the Act was disposed of. However, the learned Single Judge has upheld the order of the State Government also on the ground that there was delay of nearly two decades on the part of the appellants from the declaration made in favour of the appellants by the benamidar on December 14, 1966 in challenging the order and, therefore, the appellants were not entitled to any relief. As observed earlier, the Competent Authority had passed order declaring the disputed land to be excess vacant land on December 31, 1987 and within reasonable time the jurisdiction of the State Government was sought to be invoked by the appellants by filing an application under section 34 of the Act in January 1989. Therefore, it would not be correct to say that there is delay of about two decades on the part of the appellants in invoking the jurisdiction of the State Government under section 34 of the Act. Moreover, it is not the case of the respondents that Narendrakumar was the real owner of the property in question and that the appellants had no title whatsoever to the said property. Therefore, the property belonging to the appellants could not have been included by Narendrakumar in his statement which was submitted under section 6(1) of the Act, nor could it have been declared to be excess vacant land under the Act. Thus, order being nullity, the appellants were justified in challenging the same within reasonable time of one year. The finding that in view of the provisions of the Benami Transactions (Prohibition) Act, 1988, the appellants are not entitled to get any relief against benamidar in any proceedings is liable to be set aside because the decision in the case of Mithilesh Kumari and another (supra) has been specifically overruled by the Supreme Court in the subsequent decision rendered in the case of R.Rajagopal Reddy (supra) wherein the view taken is that the provisions of Benami Transactions (Prohibition) Act,

1988 operate prospectively and not retrospectively. The result of the above discussion is that the impugned judgment will have to be set aside.

For the foregoing reasons, the appeal succeeds. The judgment dated March 27, 1995 rendered by the learned Single Judge in Special Civil Application No. 4825/90 which is impugned in the present appeal is set aside and quashed. The petition filed by the appellants is partly accepted. The order dated December 31, 1987 passed by the Competent Authority and Additional Collector, Urban Land Ceiling, Rajkot under section 8(4) of the Act as well as order dated May 4, 1989 passed by the State Government under section 34 of the Act are set aside. Rule is made absolute in the petition to the extent indicated hereinabove only, with no order as to cost. The Competent Authority and Additional Collector, Urban Land Ceiling, Rajkot shall decide the matter afresh under the Act treating the disputed property as belonging to the appellants and if necessary, shall call upon the appellants to submit a fresh statement under section 6(1) of the Act regarding their holdings of properties as on February 17, 1976 within the Urban Agglomeration of Rajkot. The respondents shall be entitled to recover the amount of compensation paid to Narendrakumar Damani in respect of land in question, in accordance with law including as arrears of land revenue. The appeal accordingly, stands allowed with no order as to costs.

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14.3.2000 (J.M.Panchal,J.) (A.M.Kapadia,J.)

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